requires, and leave those whose rights are affected by it to take steps to annul it.

Applying the rule deduced from the decisions to the case under discussion we conclude that, though there is much support, the weight of authority is against the proposition that a ministerial officer has a right to question the constitutionality of a law in a *mandamus* proceeding to compel him to act under such law.

DEATH AND SURVIVORSHIP—PRESUMPTIONS.

In the case of *Walton & Co. v. Burchel,* decided by the Supreme Court of Tennessee in 1907, but reported only recently in 121 *Southern Reporter,* 391, where a father and son were killed by a premature explosion of dynamite, the court held that "in the absence of evidence as to which died first, there is no presumption in favor of either; the presumption being that both died at the same time;" and affirmed the decision of the lower court which charged the jury that "when the proof shows that two persons are killed in a common sudden disaster, the presumption is that they died simultaneously." Among the leading cases cited by the court to back up this opinion are: *Russell v. Hallett,* 23 Kan. 276; *Newell v. Nichols,* 75 N. Y. 78; *Moehring v. Mitchell,* 1 Barb. Ch. (N. Y.) 264; *Young Women's Christian Home v. French,* 187 U. S. 401, all of which clearly follow the common law rule that when two or more perish in the same disaster, there is *no presumption of law whatever* upon the subject and that the law will no more presume that all died at the *same instant* than it will presume that one survived the other.

The question then remains, in these cases of survivorship in a common disaster, whether the presumption that all died simultaneously has the same effect and means the same as the common law rule which holds that there is no presumption. Some courts seem to be careless in their expressions on this point. *Newell v. Nichols, supra.*

Presumptions of law are rules which, in certain cases, either forbid or dispense with any ulterior inquiry; *Bouvier's Dictionary.* But some presumptions of law are disputable and hold good only until they are invalidated by proof, and it seems that this proof cannot be overcome always by a bare preponderance of evidence. *The State v. Jones,* 64 Iowa 349. While not regard-

ing a presumption as evidence, nevertheless some courts hold it has a certain amount of probative force. *Barber's Appeal,* 63 Conn. 393; *Bradshaw v. The People,* 153 Ill. 156.

It would seem then, that it would require more evidence, to some degree at least, with the presumption in the case than with the presumption out.

The question of survivorship is one of fact, to be decided in each case by the jury without any rule of presumption; *Robinson v. Gallier,* Fed Cas. No. 11,951; and if the evidence does not establish the survivorship of any one, the law will treat it as a matter incapable of being determined. *Wing v. Angrave,* 8 H. L. Cases 182.

Although, with the exception of Louisana and California, the civil law does not apply in this country, yet evidence as to age, sex, and physical condition of the persons who perished, the nature of the accident and the manner of death may all be taken into consideration by the jury. *Wigmore on Evidence,* Sect. 2532. In the absence of any legal presumption it would seem that the jury may consider any evidence, however slight, in determining whether the parties died together or one survived the other; *Robinson v. Gallier, supra;* and the finding or verdict that one of the persons survived the other may thereby be warranted as a question of fact, though there is no direct or positive evidence upon the question. *Ehle's Will,* 73 Wis. 445; *Stinde v. Ridgway,* 55 How. Pr. (N. Y.) 301.

So it seems that there is a difference whether the law presumes that the parties died together or does not presume anything at all, and therefore the Tennessee court was wrong in assuming that there is no difference even though the effect in this particular case would probably have been the same.

CHANGE OF CONTRACT OF INSURANCE BY AMENDMENT OF BY-LAWS OF A FRATERNAL MUTUAL BENEFIT ASSOCIATION.

By its recent decision in the case of *Wright v. The Knights of the Maccabees of the World,* 42 N. Y. Law J. No. 56, the Court of Appeals of New York has further extended a rule of law laid down by it which seems to be peculiar to that state, and unsupported by either the weight of opinion or the better reasoning of other jurisdictions. The history of this case, which has been